

### REMARKS

Claims 26-71 are pending. Of these claims, claims 32-71 are cancelled herein.

No new matter is introduced.

Applicants reserve the right to reintroduce cancelled subject matter, for example, in a later-filed continuing application.

#### **Rejection of Claims under 35 U.S.C. §102(b)**

##### **Claims 26-31**

The Office rejected claims 26-31 as allegedly anticipated by Barnes (WO 01/10459) ("Barnes"). Office Action at pages 2-8. In view of the following remarks, the rejection is traversed.

The Office states that:

In the instant case it appears that Applicants have sequenced a protein for which its sequence was previously unknown. The source from which it is obtained and the reported molecular weight of the protein of Barnes and the protein of the instant invention are the same.

Office Action at page 6, lines 7-10. According to the Office:

[Barnes] is deemed to anticipate the instant claims above, and the burden of establishing non-anticipation by objective evidence is shifted to the Applicants.

Office Action at page 4, lines 4-6.

Applicants do not concede the merits of this rejection and, for reasons previously stated, maintain that the Office has not established a *prima facie* case of anticipation. Nonetheless, in order to advance prosecution, Applicants submit herewith an affidavit and attached exhibits (Barnes *et al.*, Dev. Biol. (Basel), 121:75-84 (2005) ("Barnes *et al.* article"); and do Vale *et al.*, Fish & Shellfish Immunology, 15:129-144 (2003) ("do Vale *et al.* article")) that provide the objective evidence that the Examiner asserted as required to show that the claimed invention is not anticipated by Barnes.

The affidavit and exhibits set forth facts showing that the *P. damsela* protein that is described in Barnes is *NOT* the same protein disclosed by the '276 application. According to Dr. Barnes' affidavit, the protein disclosed in Barnes was thought to have a molecular mass close to, but less than 55KDa, which Dr. Barnes now knows is actually

52KDa. (See also Barnes at page 13, lines 10-11, "... *running close to, but below, the 55KDa marker.*"). And, Dr. Barnes points out that he co-authored the Barnes *et al.* article (attached as exhibit), which describes further work done on the same protein described in Barnes and referring to this same protein as having a mass of 52KDa. Thus, although "55KDa" is recited in Barnes, subsequent to further characterization of the protein by Dr. Barnes, it turned out that the protein is actually 52KDa.

Moreover, Dr. Barnes points out that the further characterization of this 52KDa protein is described in the Barnes *et al.* article, which shows that it is a different protein than the 55KDa protein taught by the present application. Indeed, Dr. Barnes states in his affidavit that "it is a scientific fact that the 52KDa protein disclosed by Barnes is distinct from the 55KDa protein disclosed by the '276 application."

Applicants respectfully submit that the affidavit and the attached exhibits further provide the objective evidence that the Office asserted as being required to show that Barnes does not anticipate the claimed invention. Applicants respectfully request that the Office withdraw this rejection and allow claims 26-31.

#### ***Claims 62-71***

The Office rejected claims 62-71 as allegedly anticipated by Edwards (US 6,087,336). Office Action at pages 8-9.

Claims 62-71 are cancelled herein, therefore, the rejection is rendered moot.

Applicants respectfully request that the Office withdraw this rejection.

#### ***Claim 62***

The Office rejected claims 62-71 as allegedly anticipated by Barnes. Office Action at pages 7-8.

Claim 62 is cancelled herein, therefore, the rejection is rendered moot.

Applicants respectfully request that the Office withdraw this rejection.

**CONCLUSION**

Applicants believe that all rejections have been traversed or rendered moot and that the claims are in condition for immediate allowance. Early notice to that effect is earnestly solicited.

The Examiner is invited to contact the undersigned at (202) 857-4507 with any questions she may have concerning this submission.

Respectfully submitted,

Date: January 19, 2009

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